

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 21, 2001

Alternate order to CA-20
From 10/25/01

TO: PARTIES OF RECORD IN A.01-06-007

Enclosed is the Alternate Draft Decision of Commissioner Wood to the Draft Decision of Administrative Law Judge (ALJ) Walker previously mailed to you.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

As set forth in Rule 77.5, parties to the proceeding may file comments on the enclosed alternate at least seven days before the Commission meeting or no later than December 3, 2001. Reply comments should be served by December 10, 2001. An original and four copies of the comments and reply comments with a certificate of service shall be filed with the Commission's Docket Office and copies shall be served on all parties on the same day of filing. The Commissioners and ALJ shall be served separately by overnight service.

/s/ LYNN T. CAREW

Lynn T. Carew, Chief
Administrative Law Judge

LTC:mnt

Enclosure

Decision ALTERNATE DECISION OF COMMISSIONER WOOD
(Mailed 11/21/01)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Gould-Mesa 220 kV Transmission Right of Way to New Century Auto, LLC.

Application 01-06-007
(Filed June 6, 2001)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to New Century Auto, LLC a 5.3-acre site located on a portion of SCE's Gould-Mesa 220-kilovolt (kV) transmission right-of-way in the City of San Gabriel. New Century Auto would operate an automobile dealership on the site, a use that SCE states will not interfere with its utility operations. We deny the application, without prejudice, for failure to comply with the California Environmental Quality Act.

2. Background

The 5.3-acre site is used by SCE for above-ground transmission and distribution lines.¹ SCE acquired the property in 1922. Total book value for the 5.3 acres is \$11,660.35. The site is currently vacant. SCE proposes to lease the site to New Century Auto for the development and operation of an auto dealership facility. SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The term of the lease to New Century Auto is 20 years, with options to renew for three additional 10-year terms. The lessee would pay a base rent of \$100,000 in the first year, escalating to \$218,550 in the twentieth year. The base rent would be adjusted upon exercise of each renewal option based on the then current fair rental value of the property, excluding lessee improvements.

The agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. New Century Auto would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 17-foot clearance from all overhead electrical conductors. SCE also would require the lessee to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and

¹ The site is bounded on the north by Las Tunas Boulevard, on the east by Burton Avenue, on the south by residential areas, and on the west by a commercial development.

wood poles. The lessee would be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of an automobile dealership.

Under the lease, New Century Auto would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that, of the uses allowed by the City of San Gabriel, SCE determined that an auto dealership facility offered the highest level of potential revenues.

To evaluate the rental value for the site, SCE received proposals from various developers. After reviewing the proposals, SCE reviewed rent paid for comparable sites by comparable auto dealerships in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that New Century Auto was given the opportunity to develop the property because of the background and financial position of the company's president, Dennis Tzu Chien Lin. Lin has been in the auto dealership business since 1992, when he purchased New Century BMW in the City of Alhambra. At the time of purchase, the dealership was in bankruptcy. Lin brought the dealership out of bankruptcy and later founded New Century Auto Group.

Today, the New Century Auto Group is comprised of four separate auto dealerships in Southern California: New Century BMW in Alhambra, Century West BMW in Universal City, New Century VW in Glendale, and New Century Ford in San Gabriel. In the year 2000, SCE states, the four dealerships had combined revenue of \$217 million on the sale of 4,880 new vehicles and 1,806 used vehicles.

6. Environmental Review

SCE states that New Century Auto is in the process of obtaining all permits and approvals required by the appropriate governmental agencies having jurisdiction for the development of an automobile dealership facility on the site. In accordance with Article 6.2(h) of lessee's agreement with SCE, lessee must procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals, including but not limited to grading permits, building permits, zoning and planning requirements, and approvals from the various governmental agencies and bodies having jurisdiction.

Under the California Environmental Quality Act (Public Resources Code §21000, et seq., hereinafter "CEQA"), the Commission is obligated to consider the

environmental consequences of a project that is subject to the Commission's discretionary approval. (Public Resources Code §21080). In the Proposed Decision, the assigned administrative law judge (ALJ) discussed the fact that in past decisions, the Commission did not consider environmental impacts as part of its deliberations, but, instead, deferred to local environmental review that might occur after Commission approval.

However, as the ALJ reports, to ensure that no development will take place without CEQA review by the appropriate agency, the Commission on August 2, 2001, in D.01-08-022, determined that it must handle such applications differently. The Commission would require the utility to include with its application copies of the necessary documents issued by the local entity acting as the lead agency under CEQA. The Commission would then assume the role of a responsible agency for CEQA purposes.

The ALJ proposed that since this application was filed before the issuance of D.01-08-022, the Commission should approve the application on condition that SCE submits the necessary documents within 120 days to confirm that the lead agency has, in fact, conducted environmental review for this project.

The ALJ is correct in observing that the Commission has approved prior such applications without first considering environmental impacts. However, this approach is incorrect under applicable law.

CEQA applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities." (Title 14 California Code of Regulations, hereinafter "CEQA Guidelines", §15002.) Each public agency is responsible for complying with CEQA. A public agency must meet its own responsibilities under CEQA

and cannot not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish. (CEQA Guidelines §15020)

Where a project is to be approved by more than one public agency, one agency must be responsible for preparing an Environmental Impact Report (EIR) or Negative Declaration for the project. This agency is called the Lead Agency. (CEQA Guidelines §15050) Any other public agency which has responsibility for approving the project is a “Responsible Agency” (Public Resources Code §21069). The decision-making body of each Responsible Agency must consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each Responsible Agency must certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the project. (CEQA Guidelines §15050).

Because the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed, this Commission must act as either a Lead or Responsible Agency under CEQA. If the project is to be carried out by a private person or entity, the Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines §15051 (b)). In the current situation, the Commission’s discretionary role is very limited: to approve SCE’s request for authority to enter into a lease. It is the City of San Gabriel, as the agency which must approve and supervise the automobile dealership that will use the land

subject to the lease, that will likely assume the duties of Lead Agency. Thus the Commission is a Responsible Agency for the purposes of this project.²

A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. (CEQA Guidelines §15096(a)). The Responsible Agency must be available to consult with the Lead Agency upon request, and should review and comment on draft EIRs and Negative Declarations for projects which the Responsible Agency would later be asked to approve. These comments must be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. (CEQA Guidelines §15096(d)). In the case of a lease request such as this, the Commission's responsibility to comment on a draft document would be extremely limited.

Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. (CEQA Guidelines §15096(f)).³ The Responsible Agency must state that it considered the EIR or Negative Declaration as prepared by a Lead

² In most circumstances, the determination by the Lead Agency of whether to prepare an EIR or a Negative Declaration is final and conclusive for all persons, including Responsible Agencies.

³ A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

Agency. The Responsible Agency must make findings required for each significant effect of the project. (CEQA Guidelines §15096(h)). The Responsible Agency must file a Notice of Determination in the same manner as a Lead Agency, except that the Responsible Agency does not need to state that the EIR or Negative Declaration complies with CEQA. (CEQA Guidelines §15096(i)).

The Commission can do none of these things, in the current circumstances, because it faces an application devoid of environmental documentation and is asked to issue discretionary approval without knowledge of whether the City of San Gabriel or any other agency has fulfilled its Lead Agency responsibilities subject to CEQA. Thus, we must reject the current application and advise SCE to first pursue its needed authority from the local Lead Agency.

This Commission will reject as insufficient any subsequent application that does not demonstrate that SCE or the project proponent has undertaken steps needed to ensure appropriate Lead Agency environmental review. To accomplish this, the application shall include a final EIR or Negative Declaration. SCE shall inform the Commission of the local environmental review process early enough to ensure that the Commission can fulfill its duties as a Responsible Agency.

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.
2. SCE has property at the Gould-Mesa 220-kv transmission right-of-way in the City of San Gabriel available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.
3. Subject to Commission authorization required under Pub. Util. Code § 851, SCE has negotiated a long-term lease proposal for the available property to

provide lease revenues with no interference with the operation of the transmission line.

4. The proposed lessee, New Century Auto, is managed by an organization with substantial experience in development of auto dealership facilities.

5. New Century Auto will finance, construct and maintain an auto dealership facility at the site, bearing the costs and making payments to SCE.

6. Revenue in excess of a Commission-established threshold will be shared 70/30 between the utility and ratepayers by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.

7. SCE has not submitted a Proponent's Environmental Assessment, or evidence that any public agency has prepared an Initial Study, EIR, or Negative Declaration for the proposed project pursuant to CEQA.

8. The City of San Gabriel is the public agency with the greatest responsibility for supervising and approving the project as a whole.

9. The Commission also has discretion to approve a critical aspect of the proposed project.

Conclusions of Law

1. The City of San Gabriel or a related agency should be the Lead Agency for this project for the purposes of CEQA.

2. This Commission should be a Responsible Agency for this project for the purposes of CEQA.

3. The current application is not in compliance with CEQA and should be denied.

O R D E R**IT IS ORDERED** that:

1. The application of Southern California Edison Company (SCE) seeking authorization to enter into a lease of a 5.3-acre site located on a portion of SCE's Gould-Mesa 220-kilovolt transmission right-of-way in the City of San Gabriel to New Century Auto, LLC, under the terms and conditions set forth in this application is denied, without prejudice.

2. SCE may reapply for the requested authorization when it can demonstrate that it has pursued appropriate approval and Lead Agency review under the California Environmental Quality Act, and that such review is completed.

3. Application 01-06-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Alternate Decision of Commissioner Wood as on all parties of record in this proceeding or their attorneys of record.

Dated November 21, 2001, at San Francisco, California.

/s/SUSIE TOY
Susie Toy

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, Workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are Needed, e.g., sign language interpreters, those making The arrangements must call the Public Advisor at TTY# 1-866-836-7825 or (415) 703-5282 at least three

Working days in advance of the event.